

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

USA LENDING GROUP, INC.,

Plaintiff,

v.

MIKE AHMARI,

Defendant.

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Civil Action No. 1:17-cv-386

COMPLAINT

Plaintiff, USA Lending Group, Inc., complains of Defendant, Mike Ahmari, and would respectfully show the Court as follows:

PARTIES

1. Plaintiff, USA Lending Group, Inc., is a Delaware Corporation, having its principal place of business in Austin, Texas.

2. Defendant, Mike Ahmari, is an individual believed to currently reside at 28262 Rancho Cristiano, Laguna Niguel, California 92677-7429, who may be served with process by and through the Secretary of State of Texas under § 17.044(b) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE ANN., or wherever he may be found within the State of Texas.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action under 28 U.S.C. §1332 because there is diversity of citizenship and the amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000.00. This Court has personal jurisdiction over Defendant because he has performed acts that constitute doing business in Texas by, among other conduct, contracting with a Texas resident, a Texas attorney and Texas business, and all parties were to perform the

contract in whole or in part in Texas, and committing a tort in whole or part in Texas. This Court's jurisdiction comports with the standards of fair play and substantial justice and arises directly from Defendant's purposeful contacts with the State of Texas. Thus, Defendant is subject to Texas long-arm jurisdiction under § 17.042, TEX. CIV. PRAC. & REM. CODE.

4. Venue is appropriate in this judicial district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred in the Western District of Texas.

FACTUAL BACKGROUND

5. USA Lending, formerly known as TMI Financial, is a national financial services company, headquartered in Austin, Texas, that provides commercial, residential and other lending and consulting services to the general public. USA Lending is the owner of the registered service mark "USALEND Financial," filed January 4, 2013 (the "Mark"), and all the common law and statutory rights in the Mark. The Mark is protected under Federal service mark registration and application owned by USA Lending, including U.S. Federal Registration No. 4,461,225 for use in consumer and commercial lending services, cash flow services, and other financial services more fully described in the registration.

6. In 2012, USA Lending hired Ahmari as an employee to head its marketing efforts in connection with the development and implementation of its new home mortgage program and other lending programs under development by its principals who are based in Austin, Texas. As chief marketing officer of USA Lending, Ahmari was responsible for the development of the retail-wholesale websites, the employee intranet and the social media for the company. Ahmari was to utilize the mark "USALEND Financial" and the company phone number 1-800-USA-LEND in connection with the new business operations. At the time, USA Lending already owned the domain names www.800usalend.com, www.usalendfinancial.com, www.usalendcredit.com,

and www.usalendacceptance.com. For marketing purposes, USA Lending's intention was to acquire all domain names and toll free numbers utilizing or similar to its business name and slogan - "USALEND Financial, America's Preferred Lender." Ahmari was charged with that assignment.

7. On October 9, 2012, Ahmari informed USA Lending that he acquired the domain names www.Americasdirectlender.com and www.Americaspreferredlender.com for use in its business operations. Ahmari agreed to work directly with USA Lending's attorney to obtain registered trademarks for the service marks "USALEND Financial," "America's Preferred Lender," and "America's Direct Lender" for USA Lending.

8. October 12, 2012, Ahmari informed USA Lending that he signed a lease for office space in Irvine, California to accommodate the loan originators, processors and support staff for USA Lending's California operations, and that it was his intention to get that office to its full capacity in the next 120 days. Ahmari also represented to USA Lending that the business logo will be finalized within the next day and he would order the business cards, company folders and other supplies for the company. Ahmari informed USA Lending that he still was working to obtain for it the variants of the 800-USA-LEND toll free number, with the prefixes "866-877-855, ..."

9. On November 10, 2012, Ahmari notified USA Lending that he was able to acquired ownership of the domain name www.usalend.com for it. USA Lending transferred the funds to Ahmari to purchase the rights to the website domain name for it from Internet Escrow Services. Ahmari informed USA Lending that he had set up a GoDaddy account to house the domain name, which USA Lending and its principals were told was a USA Lending Go Daddy account, and that he would be using the hosting service HostGator.com for the website.

10. Ahmari also informed USA Lending that he would be working with his good friend and programmer, Bruce Michael, to implement the retail-wholesale websites, employee intranet, social media and company university for the USALEND Financial business. In connection therewith, Ahmari forwarded the invoices from Bruce Michael and the company he was using EAPG, INC. for website/marketing services and programming tools for the www.usalend.com website, to USA Lending for payment. USA Lending paid the fees for the website development and marketing services for www.usalend.com website.

11. On October 31, 2013, Ahmari informed USA Lending that in addition to the domain name www.usalend.com, USA Lending also acquired ownership of the domain names, www.usalendcapital.com, www.centrixinsurance.com, and www.usalendcredit.com. Ahmari further advised USA Lending that he was able to acquire the rights to the toll free number 800-USA-LEND and 17 other variant toll free numbers for USA Lending in connection with the business operations.

12. Ahmari abruptly tendered his resignation as an officer and employee of USA Lending without explanation on March 20, 2014, effective immediately. USA Lending has since learned that that Ahmari formed MYNT Advisory Group, Inc. ("MYNT") a month prior to his resignation to compete with USA Lending in the marketplace. Despite Ahmari's resignation, he continues to wrongfully exercise dominion and control over the www.usalend.com website and use other property owned by USA Lending without its consent. Unbeknownst to USA Lending at the time, Ahmari apparently registered domain names and phone numbers in his individual name, or under aliases, and not in the name of USA Lending as Ahmari led it to believe.

13. Despite prior demand on Ahmari to transfer the domain name www.usalend.com and website to USA Lending, including the necessary certifications and tools to allow USA

Lending to complete the development of the website, he has failed and refused to do so. In addition, Ahmari has failed and refused to take the necessary steps to transfer the 800-USA-LEND phone number, and all the variant toll free numbers acquired on behalf of USA Lending to it.

CAUSES OF ACTION

COUNT I - BREACH OF FIDUCIARY DUTY

14. Plaintiff incorporates by reference and re-alleges the facts and allegations as set forth above.

15. USA Lending sues Ahmari for breach of fiduciary duty. As an officer and employee of USA Lending, Ahmari owed USA Lending a fiduciary duty and was obligated to act in its interests. Ahmari's duties included a duty to refrain from any self-dealing, a duty of loyalty and utmost good faith, a duty to act with integrity of the strictest kind, a duty of fair and honest dealing with the company, a duty of full disclosure, and a duty to account for all profits. As its officer in charge of the marketing and implementation of USA Lending's new loan programs through USALEND Financial, Ahmari had a special trust relationship with USA Lending.

16. Ahmari also had an obligation not to usurp a corporate opportunity for personal gain. Ahmari breached his fiduciary duties to USA Lending and its principals by engaging in self-dealing and other wrongful conduct designed to benefit himself and his company, MYNT, at the expense of USA Lending. Namely, Ahmari's registration of the www.usalend.com website and 800-USA-LEND toll free numbers in his name, or the name of his company or an alias, constitutes a misappropriation of business opportunities that belonged to USA Lending.

17. As a result of Ahmari's breach of fiduciary duties, USA Lending has suffered actual damages for which Ahmari is liable in an amount to be determined by the trier of fact. In addition, the Court may fashion equitable remedies as necessary, such as profit disgorgement or forfeiture, to remedy a breach of fiduciary duty.

COUNT II - DECLARATORY JUDGMENT

18. Plaintiff incorporates by reference and re-alleges the facts and allegations as set forth above.

19. An actual controversy exists between USA Lending and Ahmari with respect to the rights and interests of the parties to the domain name www.usalend.com and the toll free phone number 800-USA-LEND and its variants, based upon Ahmari's claim to have acquired ownership rights and interests in the domain name and toll free numbers. Ahmari's ownership claim is invalid and unenforceable because he acquired the domain names and toll free numbers while acting as an agent and employee of USA Lending and through the use of USA Lending funds and resources. Under 28 U.S.C. § 2201, USA Lending requests that the Court declare it is the owner of the rights and interests in and to the domain names, www.usalend.com, www.usalendcapital.com, www.centrixinsurance.com, and www.usalendcredit.com, and the toll free number 800-USA-LEND and the 17 variants thereto which were to have been acquired by Ahmari for the benefit of USA Lending during the period of time Ahmari was acting as its agent and representative.

EXEMPLARY DAMAGES

20. Plaintiff incorporates by reference and re-alleges the facts and allegations as set forth above.

21. The wrongful acts of Ahmari were willful and malicious. Ahmari's failure to honor his fiduciary obligations to USA Lending and his diversion of USA Lending's funds and resources to himself and his unrelated business involved an extreme degree of risk concerning the probability and magnitude of potential harm that could have resulted to the operations of USA Lending. Ahmari had actual, subjective awareness of the risks involved, but nonetheless proceeded with a conscious disregard of USA Lending's rights and interests, thereby warranting the assessment of exemplary damages against Ahmari in an amount consistent with the standards set out in § 41.001, *et seq.*, TEX. CIV. PRAC. & REM. CODE. ANN.

ADDITIONAL CLAIMS

22. USA Lending reserves the right to amend and/or supplement its Complaint to include additional claims against Ahmari during or after the discovery process.

JURY TRIAL DEMANDED

23. Plaintiff demands a jury trial pursuant to FED. R. CIV. P. 38(b).

PRAYER

Plaintiff USA Lending Group Inc. requests that upon final trial, the Court enter judgment declaring it the owner of all rights, title, and interest in and to the domain names, www.usalend.com, www.usalendcapital.com, www.centrixinsurance.com, and www.usalendcredit.com, and phone number 800-USA-LEND, and the variants thereto acquired by Ahmari while associated with USA Lending, and that it recover judgment against Mike Ahmari for: (1) actual and exemplary damages; (2) pre-judgment interest on all sums awarded as provided by law; (3) reasonable attorneys' fees; (4) costs of court and other recoverable expenses; (5) post-judgment interest as provided by law; and (6) such other and further relief to which they may be justly entitled.

Respectfully submitted,

By: /s/ James G. Ruiz

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